



AFTER REVERSAL BY THE COURT OF APPEALS, DEFENDANT’S SUPPRESSION MOTION WAS GRANTED AND HIS GUILTY PLEA WAS VACATED; EVEN THOUGH DEFENDANT’S SUPPRESSION MOTION DID NOT RELATE TO THE OFFENSE TO WHICH DEFENDANT PLED GUILTY, THE APPELLATE DIVISION SHOULD HAVE REACHED THE MERITS OF THE MOTION BECAUSE OF ITS POTENTIAL EFFECT ON THE DECISION TO PLEAD GUILTY TO ANOTHER OFFENSE IN FULL SATISFACTION OF ALL THE CHARGES (FOURTH DEPT).

The Fourth Department, after a reversal by the Court of Appeals, determined defendant’s motion to suppress evidence seized after a street stop should have been granted and vacated defendant’s guilty plea. Defendant was charged with two burglaries on different days. Defendant pled guilty to one of the burglaries in satisfaction of both. Defendant appealed the denial of the suppression motion related to the street stop. The Fourth Department did not reach the merits of the appeal because the suppression motion did not involve the offense to which defendant pled guilty. The Court of Appeals reversed, finding that the denial of the suppression motion was appealable because of its potential effect on the decision to plead guilty in satisfaction of both charges:

A majority of this Court concluded that “the judgment of conviction on appeal here did not ensue from the denial of the motion to suppress [relating solely to count two] and the latter [wa]s, therefore, not reviewable’ pursuant to CPL 710.70 (2)” The Court of Appeals reversed, stating that “the Appellate Division may review an order denying a motion to suppress evidence where, as here, the contested evidence pertained to a count—contained in the same accusatory instrument as the count defendant pleaded guilty to—that was satisfied by the plea” The Court of Appeals remitted the matter to this Court to rule on defendant’s suppression contention.

Upon remittitur, we now agree with defendant that Supreme Court erred in refusing to suppress physical evidence seized as a result of his unlawful detention on October 3, 2014 We further agree with defendant that such error was not harmless under the circumstances (see *id.* at 1424). We therefore reverse the judgment, vacate the plea, grant that part of the omnibus motion seeking to suppress the physical evidence seized from defendant on October 3, 2014, and remit the matter to Supreme Court, Monroe County, for further proceedings on the indictment. [People v Holz, 2020 NY Slip Op 03345, Fourth Dept 6-12-20](#)